May 3, 2021

Grievance Committee for the Second,
Eleventh & Thirteenth Judicial Districts
Renaissance Plaza
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Re: Grievance Complaint Regarding Attorney Jesse Sligh, State Bar No. 2220275.

To the Grievance Committee,

Jesse Sligh[1] committed a *Brady* violation, leading to a jury relying on false testimony and the wrongful conviction and imprisonment of Clinton Turner. The federal District Court held that Sligh violated *Brady* when he failed to provide the criminal record of the complainant—information that "was readily available" to him with only the "most modest effort."[2] Sligh's failure led him to elicit—and heavily rely upon—false testimony from the complainant that Sligh "should have known was false."[3]

While Turner languished in prison for 10 years,[4] Sligh enjoyed a prosperous career. A mere three years after Turner was wrongfully convicted, Sligh was promoted to an executive position in the Queens District Attorney's Office ("QDAO"),[5] a position he held until his retirement from the District Attorney's Office in 2020.[6]

Sligh's misconduct in Queens was far from unique; serious misconduct at the Queens District Attorney's Office (QDAO) has been regularly reported for years. For example, beginning in 2007, Queens prosecutors utilized interviewing practices that undermined suspects' *Miranda*

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[1] Jesse James Sligh, State Bar No. 2220275, formerly of the Queens County District Attorney's Office, 125-01 Queens Blvd., Kew Gardens, New York 11415. Phone: (718) 286-6400. Email: jjsligh@queensda.org. While it appears Sligh has retired, his contact information on the Unified Court System website remains that of the Queens District Attorney's Office. We do not have personal knowledge of any of the facts or circumstances of Reeves or the cases mentioned; this grievance is based entirely on the court opinions, briefs and other documents cited herein.

[2] Exhibit A, *Turner v. Schriver*, 327 F. Supp. 2D 174, 185, 187 (E.D.N.Y. 2004). Available at: https://casetext.com/case/turner-v-schriver.

[3] *Id.* at 186-87 (E.D.N.Y. 2004).

[4] Exhibit B, *Turner v. State*, 14 Misc. 3d 699, 700 (Ct. Cl. 2006). Available at: https://casetext.com/case/turner-v-state-of-ny-1.

[5] QNS Editorial, *Executive Ada Receives Honor*, QNS (February 28, 2013), https://qns.com/2013/02/executive_ada_receives_honor/; George Joseph, *Top Queens Prosecutors Broke The Rules, Then Got Promoted. Will The New DA Keep Them In Charge?*, The Gothamist (January 9, 2020), https://gothamist.com/news/top-queens-prosecutors-broke-rules-got-promoted.

[6] David Brand, *Queens criminal court will have just one Black man on the bench after state cuts judges*, Queens Daily Eagle (October 4, 2020), https://queenseagle.com/all/queens-criminal-court-will-have-just-one-black-man-on-the-bench-after-state-cuts-judges.

rights, according to the Appellate Division and the Court of Appeals.[7] Another QDAO policy established a wall between different units in the office, leading to trial prosecutors failing to disclose exculpatory material in the hands of another unit.[8] The Appellate Division has repeatedly criticized Queens prosecutors' improper summation conduct and advised that the Office provide better training for its trial prosecutors.[9] There are numerous court decisions finding that QDAO prosecutors acted improperly—a recent civil lawsuit contains a list of 117 published decisions involving prosecutorial misconduct in Queens cases.[10] Sligh's misconduct appears to fall within this appalling, unprecedented, and largely-unaddressed pattern of improper conduct.

Just as prosecutors hold individuals accountable for crimes, so should prosecutors be held accountable for their misconduct. Despite the findings of misconduct noted in this grievance, as of the writing of this grievance, the New York Attorney Detail Report lists "Disciplinary History: No record of public discipline" for Sligh.[11] The QDAO was "unable to locate" any disciplinary records for Sligh.[12]

The Grievance Committee must suspend Sligh for his serious misconduct.

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[7] *People v. Dunbar*, 104 A.D.3d 198 (2d Dep't 2013), *aff'd*, 24 N.Y.3d 304 (2014). *See also People v. Perez*, 37 Misc. 3d 272 (Queens Sup. Ct. 2012) (deeming QDAO's *Miranda* interview practice an ethical violation of Rule 8.4(c)); Russ Buettner, *Script Read to Suspects Is Leading to New Trials*, New York Times (January 30, 2013) https://www.nytimes.com/2013/01/31/nyregion/appellate-panel-overturns-3-queens-convictions-based-on-rights-preamble.html.

[8] Sarah Maslin Nir, *Murder Conviction Tossed Out in Queens*, New York Times (March 18, 2013) https://www.nytimes.com/2013/03/19/nyregion/murder-conviction-reversed-over-withheld-information.html. *See also People v. Petros Bedi*, Ind. No. 4107/96, NYLJ 1202592836531 (Queens Sup. Ct. March 13, 2013) (Witness Security Program documents, which were not made part of prosecutor's file "as matter of custom," were *Rosario* and *Brady* materials; failure to disclose required vacating murder conviction).

[9] *See, e.g.*, *People v. Velez*, 2014-09698, Oral Argument, Appellate Division, 48:30-50:15 (March 16, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1521208616.External_(PubliP).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1521208616.External_(Public).mp4; *People v. Cherry,* 2014-10909*,* Oral Argument, Appellate Division, 26:34-29:31 (March 13, 2018) http://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1520949280.External_(Public).mp4 or http://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad2&video=VGA.1520949280.External_(Public).mp4.

[10] Amended Complaint, *Julio Negron v. The City of New York et al.*, No.18-cv-6645 (DG) (RLM) (filed March 10, 2021).

[11] *See Attorney Detail Report*, Attorney Online Services -- Search, New York Unified Court System, available at https://iapps.courts.state.ny.us/attorneyservices.

[12] Joseph, *Top Queens Prosecutors Broke The Rules, Then Got Promoted. Will The New DA Keep Them In Charge?*, *supra*.

1. The Grievance Committee has a Unique Duty to Protect the Public by Holding Prosecutors Accountable for Misconduct.

A. Prosecutorial Misconduct is Pervasive and Unchecked.

Our legal system holds prosecutors to the highest standards of all attorneys.[13] When any attorney missteps, it can cause harm, typically to an individual client. But a prosecutor's misconduct can destroy a person's life—and that of their family. Moreover, a prosecutor's misconduct negatively affects both law and society. A single prosecutor's misconduct can damage "the reputation and public confidence placed" in all prosecutors and the justice system itself.[14]

As the United States Supreme Court and the New York Court of Appeals have stated, a prosecutor "may strike hard blows, [but] he is not at liberty to strike foul ones. *It is as much* his duty to refrain from improper methods calculated to produce a wrongful conviction *as it is* to use every legitimate means to bring about a just one."[15] Hal Lieberman, former Chief Counsel for the Departmental Disciplinary Committee in New York's First Department, has noted how unchecked prosecutorial misconduct "undermines the integrity of the entire system."[16]

But misconduct by prosecutors remains widespread and unchecked in the New York criminal legal system. A 2013 analysis of ten years of state and federal decisions revealed more than two dozen instances in which judges reversed convictions explicitly because of prosecutorial misconduct.[17] Yet these appellate courts "did not routinely refer prosecutors for investigation by the state disciplinary committees," and the disciplinary committees "almost never took serious action against prosecutors."[18] In the 30 cases where judges overturned convictions based on prosecutorial misconduct, only one prosecutor was publicly disciplined by a New York disciplinary committee. None of the other implicated prosecutors were disbarred, suspended or publicly censured and, according to personnel records gathered by ProPublica, several prosecutors were promoted and given raises soon after courts cited them for abuses.[19] As the *New York Times* Editorial Board wrote in 2018, "there's no reliable system for holding prosecutors

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[13] *Matter of Rain*, 162 A.D.3d 1458, 1462 (3d Dep't 2018) ("prosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice"); *see also* 2017 ABA Prosecution Function Standards, Standard 3-1.4(a) ("In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations.").

[14] *Rain*, 162 A.D.3d at 1462.

[15] *Berger v. United States,* 295 U.S. 78, 88 (1935) (emphasis added); *People v. Jones*, 44 N.Y.2d 76, 80 (1978) (quoting *Berger*, 295 U.S. at 88). *See also People v. Calabria*, 94 N.Y.2d 519, 523 (2000) ("Evenhanded justice and respect for the fundamentals of a fair trial mandate the presentation of legal evidence unimpaired by intemperate conduct aimed at sidetracking the jury from its ultimate responsibility--determining facts relevant to guilt or innocence.") (citation omitted); *People v. Levan*, 295 N.Y. 26, 36 (1945).

[16] Joaquin Sapien and Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody,* ProPublica (April 3, 2013), https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody.

[17] *Id.*

[18] *Id.*

[19] *Id.*

accountable for their misconduct, and they certainly can't be entrusted with policing themselves."[20]

B. The *Brady* Rule and State Discovery Laws are Fundamental to the Constitutional Rights to a Fair Trial and Due Process, Yet Prosecutors Often Fail to Provide Favorable Evidence to the Defense.

One of the most damaging forms of prosecutorial misconduct is the *Brady* violation—when a prosecutor suppresses exculpatory or impeachment evidence.[21] A prosecutor's duty to disclose *Brady* evidence is indispensable to the rights to due process and a fair trial.[22] In our legal system, *Brady* disclosures permit the defense to investigate and litigate different leads and to protect the defendant from wrongful convictions. It is unsurprising, then, that suppression of favorable evidence has played a role in over 30% of known wrongful convictions and 44% of known wrongful convictions for murder.[23]

A prosecutor has an affirmative duty to search for favorable material in their own records and those of related agencies—and to turn these over to the defense.[24]

The New York legislature and the New York judiciary have emphasized the importance of the *Brady* rule by codifying it in statutes and court orders. Even before the 2020 discovery reform, New York State's discovery statute required prosecutors to disclose all evidence that must be disclosed per the United States and New York constitutions—including any *Brady* evidence.[25] Other New York criminal procedure law sections obligated the prosecutor to disclose types of evidence that commonly contain *Brady* information.[26] The 2020 discovery reform preserved the statutory codification of *Brady* and further expanded a prosecutor's discovery obligations.[27] Additionally, under federal law, a prosecutor who commits an intentional *Brady* violation can be charged with a felony.[28]

Indeed, the *Brady* rule is of such import that it has been codified into its own subsection in New York Rule of Professional Conduct 3.8(b):

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[20] New York Times Editorial Board, *Prosecutors Need a Watchdog*, N.Y. Times, (August 14, 2018), https://www.nytimes.com/2018/08/14/opinion/new-york-prosecutors-cuomo-district-attorneys-watchdog.html.

[21] *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

[22] *Brady*, 373 U.S. at 87.

[23] *Government Misconduct and Convicting the Innocent*, National Registry of Exonerations (September 1, 2020): https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf.

[24] *Kyles v. Whitley*, 514 U.S. 419, 432 (1995); *Strickler v. Green,* 527 U.S. 263, 280-81 (1999).

[25] C.P.L. § 240.20(1)(h) (McKinney) (repealed); *Doorley v. Castro*, 160 A.D.3d 1381, 1383 (4th Dep't 2018).

[26] C.P.L. § 240.20 (McKinney) (repealed).

[27] C.P.L. § 245.20(1)(k).

[28] 18 U.S.C. § 242.

> A prosecutor…shall make timely disclosure…of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence….[29]

Rule 3.8 makes clear that the professional rule is broader than the *Brady* obligation: all evidence that tends to exculpate the defendant must be turned over, rather than just *materially* exculpatory evidence. As a consequence, more conduct will violate Rule 3.8 than the constitutional rule.

Despite the significance of the *Brady* rule in the criminal legal system, New York prosecutors often violate it. The New York State Bar has acknowledged that "New York *Brady* violations occur at all phases of the criminal justice process and are often not discovered until after conviction."[30] The New York State Justice Task Force has pointed to "[d]ocumented instances of inconsistent application by prosecutors of the requirement for disclosure of exculpatory evidence."[31]

C. Prosecutors Have a Duty to Present Evidence Honestly.

Prosecutors may not mislead the court or jury and many prohibitions on prosecutorial conduct relate to dishonesty. For example, it violates due process for a prosecutor to knowingly present perjured testimony.[32] If a prosecutor knows that a witness intends to lie on the stand, she must encourage the witness not to do so or else refuse to call the witness to testify. If a prosecutor later learns that a witness fabricated testimony, she is required to take remedial steps.[33] Prosecutors possess a "special duty" not to mislead a judge, jury, or defense counsel.[34]

D. The Grievance Committee, as the Only Body Entrusted with Checking Prosecutorial Misconduct, has an Important Duty to Hold Prosecutors Accountable.

The Grievance Committee is in a unique position to hold New York prosecutors accountable for misconduct. While other attorneys and law enforcement officers are liable to civil lawsuits when they neglect their duties, the absolute immunity doctrine shields prosecutors from civil

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[29] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b). This Rule was previously codified in New York's Code of Professional Responsibility DR 7-103, 22 NYCRR § 1200.34 (repealed).

[30] N.Y. State Bar Ass'n, *Report of the Task Force on Criminal Discovery*, at 52 (Jan. 30, 2015) https://nysba.org/NYSBA/Practice%20Resources/Substantive%20Reports/PDF/Criminal%20Discovery%20Final%20Report.pdf.

[31] N.Y. State Justice Task Force, *Report of the New York State Justice Task Force of Its Recommendations Regarding Criminal Discovery Reform*, at 2 (July 2014), http://www.nyjusticetaskforce.com/pdfs/Criminal-Discovery.pdf.

[32] *See, e.g., Miller v. Pate*, 386 U.S. 1 (1967).

[33] *See People v. Waters*, 35 Misc.3d 855 (Bronx Cty 2012) (violation of due process when prosecutor "although not soliciting false evidence, allows it to go uncorrected when it appears") (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (prosecutor failed to correct witness's false testimony that he had not received any promise in return for his testimony).

[34] *See, e.g.*, Daniel S. Medwed, *Prosecution Complex: America's Race to Convict and its Impact on the Innocent*, 80-81 (2012); *Connick v. Thompson*, 563 U.S. 51, 65-66 (2011). *See also* Bennett L. Gershman, The Prosecutor's Duty to Truth, 14 Geo. J. Legal Ethics 309, 316 (2001) http://digitalcommons.pace.edu/lawfaculty/128/ ("The courts have recognized that, as a minister of justice, a prosecutor has a special duty not to impede the truth.").

accountability.[35] In 1976, the U.S. Supreme Court partly justified absolute immunity for prosecutors because it believed that prosecutorial misconduct would be regulated by the "checks" of "professional discipline" by state bar organizations.[36]

Unfortunately, the U.S. Supreme Court's assumption—that professional disciplinary actions "would provide an antidote to prosecutorial misconduct"[37]—has not been borne out. A 2013 report from the Center for Prosecutor Integrity identified 3,625 cases of prosecutorial misconduct between 1963 and 2013. Of those, only 63 prosecutors—less than 2 percent—were ever publicly sanctioned.[38]

In their 2016 article, "Prosecutorial Accountability 2.0," ethics experts Professors Ellen Yaroshefsky and Bruce Green pointed out that prosecutors "were rarely disciplined for misconduct, and if so, not very seriously." Indeed, "neither judges nor defense lawyers ordinarily alerted disciplinary agencies when prosecutors acted wrongly … [D]isciplinary agencies and the courts overseeing them largely gave prosecutors a pass, perhaps hoping that prosecutors' offices would clean up their own messes."[39] "It's an insidious system," said Marvin Schechter, then chairman of the criminal justice section of the New York State Bar Association, to ProPublica. "Prosecutors engage in misconduct because they know they can get away with it."[40]

In 2018, the Appellate Division suspended New York prosecutor Mary Rain's law license for two years for a variety of misconduct, including summation misconduct.[41] In December 2020, the Appellate Division imposed the same penalty for the egregious misconduct of ex-prosecutor Glenn Kurtzrock.[42] But even a short suspension like that received by Rain and Kurtzrock[43]—indeed, public discipline of any kind—remains rare.

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[35] *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976); *Shmueli v. City of New York*, 424 F.3d 231, 237 (2d Cir. 2005) (noting that prosecutors have "absolute immunity" for the "conduct of a prosecution"); *Dann v. Auburn Police Dep't*, 138 A.D.3d 1468, 1469 (4th Dep't 2016) ("The law provides absolute immunity for conduct of prosecutors that was intimately associated with the judicial phase of the criminal process.") (internal quotation marks omitted); *see also Ryan v. State*, 56 N.Y.2d 561, 562 (1982) (holding that "the doctrine of prosecutorial immunity" precludes "recovery against the State" for "acts of prosecutorial misconduct").

[36] *Imbler,* 424 U.S. at 429; *see also Matter of Malone*, 105 A.D.2d 455, 459 (3d Dep't 1984) (rejecting public official's claim to prosecutorial immunity in a professional ethics proceeding).

[37] Karen McDonald Henning, *The Failed Legacy of Absolute Immunity Under Imbler: Providing A Compromise Approach to Claims of Prosecutorial Misconduct*, 48 Gonz. L. Rev. 219, 242–43 (2012).

[38] Center for Prosecutor Integrity, *White Paper: An Epidemic of Prosecutor Misconduct* (December 2013) www.prosecutorintegrity.org/wp-content/uploads/EpidemicofProsecutorMisconduct.pdf; *see also Proj. On Gov't Oversight*, Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards (Mar. 12, 2014), http://pogoarchives.org/m/ga/opr-report-20140312.pdf; Charles E. MacLean & Stephen Wilks, *Keeping Arrows in the Quiver: Mapping the Contours of Prosecutorial Discretion*, 52 Washburn L.J. 59, 81 (2012) (citing "the small number of sanctions against prosecutors, relative to lawyers as a whole"); Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. Rev. 721, 725 (2001) (describing the "rarity of discipline" of prosecutors).

[39] Bruce Green & Ellen Yaroshefsky, *Prosecutorial Accountability 2.0*, 92 Notre Dame L. Rev. 51, 65 (2017) (internal citations omitted); *see also* Richard A. Rosen, *Disciplinary Sanctions Against Prosecutors for Brady Violations: A Paper Tiger*, 65 N.C. L. Rev. 693, 697 (1987).

[40] *ProPublica Investigates Prosecutorial Misconduct in New York,* Innocence Project (April 3, 2013) https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody

[41] *Rain*, 162 A.D.3d at 1462.

Prosecutors, the public officials tasked with holding the public accountable, are not held accountable themselves. Absent strong, public discipline by the Grievance Committee, misconduct like that of Sligh will continue unabated and undeterred.

2. The District Court Vacated Turner's Conviction Because Sligh Failed to Fulfill His *Brady* Obligations, Depriving Turner of Due Process.

Sligh prosecuted Turner for robbery and related charges, for which Turner was eventually convicted.[44]

A white man named Clarke claimed that upon returning to his car from a bar, he saw a Black man, Turner, searching through his glove compartment, and chased him.[45] At some moment during that chase, Turner allegedly turned, slashed at the complainant with a knife, and robbed him.[46] Importantly, Clarke claimed he did not smoke or drink alcohol, had never been arrested or convicted of any crime, and had never seen Turner before that encounter.[47]

In contrast, Turner testified that he had known Clarke, a crack and heroin user, for over 6 months and had been selling him drugs.[48] Turner would sell Clarke drugs — but sometimes substituted the drugs with "bread crumbs and grits."[49] On the day before the alleged robbery, Turner sold the complainant eight vials, but only four of them contained real drugs.[50] Thus, Turner claimed that the complainant "had made up the robbery in retaliation for a bad drug deal."[51]

The complainant's credibility was "central" to Sligh's case.[52] Sligh was apparently aware of this, telling the trial judge, "it's merely now a question of credibility and that question should

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[42] *In the Matter of Glenn Kurtzrock*, 192 A.D.3d 197 (2d Dep't, Dec. 30, 2020). http://courts.state.ny.us/courts/ad2/Handdowns/2020/Decisions/D65317.pdf.

[43] In the context of the apparently rampant and egregious misconduct by Rain and Kurtzrock, the court's sanction was surprisingly light. *See, e.g.*, Bennett L. Gershman, *The Most Dangerous Prosecutor In New York State, HuffPost (September 20, 2017)*, https://www.huffpost.com/entry/the-most-dangerous-prosec_b_12085240; Bennett L. Gershman, *A Most Dangerous Prosecutor: A Sequel*, HuffPost (October 1, 2016), https://www.huffpost.com/entry/a-most-dangerous-prosecutor-a-sequel_b_57effb8fe4b095bd896a0fba; Nina Morrison, "What Happens When Prosecutors Break the Law?" *New York Times*, June 18, 2018 https://www.nytimes.com/2018/06/18/opinion/kurtzrock-suffolk-county-prosecutor.html (see also Morrison's twitter thread following the *Kurtzrock* decision, https://twitter.com/Nina_R_Morr/status/1344413003903602688)

[44] Ex. A*, Turner*, 327 F. Supp. 2d at 176.

[45] *Id.* at 177.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 178.

[49] *Id.*

[50] *Id.*

[51] *Id.* at 184-85.

[52] *Id.* at 185.

ultimately be resolved by the trier of fact, the jury," and "ultimately it comes down to whether they believe [the complainant] or believe the Defendant."[53]

Criminal records—including records of prior arrests—can be used as impeachment evidence, that is, evidence that calls into question and undermines a witness's credibility. Recognizing this, Turner's attorney requested that Sligh produce the complainant's criminal records.[54] The District Court similarly recognized the records' importance:

> [T]he circumstances of the alleged crime…and [Sligh's] knowledge that the defense was [fabrication], all pointed to the need to check [the complainant's] record before offering him as a witness, and indeed offering him as a witness *without a record*.[55]

Indeed, Sligh himself recognized the importance of criminal records in a trial that centered on the question of credibility. At trial, Sligh asked Turner "numerous questions about his own conviction record and encouraged the jury to consider that record when determining petitioner's credibility."[56] Sligh also elicited testimony from the complainant that the latter had not been arrested or convicted of a crime[57]—and later noted the complainant's "lack of a criminal record" in summation, bolstering the complainant's credibility.[58]

Not only was the complainant's criminal record of central importance, but it would have been "readily available" to Sligh with only a "most modest effort."[59] Sligh could have obtained an individual's criminal record from the police or his office's investigators,[60] or a paralegal.[61] But Sligh did none of that. Instead, in a case where the complainant's credibility was central and the defense had accused the complainant of fabricating the crime, Sligh asked the complainant whether he had a criminal record.[62] The complainant said no, and Sligh took his word for it, and did not look into the matter further.[63]

But the complainant *did* have a criminal record. In fact, the complainant had an "extensive" criminal record,[64] including "at least six arrests in Queens County" before the trial.[65] Sligh neither obtained these files from his own office nor the entirety of the criminal record from an

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[53] *Id.*

[54] *Id.* at 178.

[55] *Id.* at 184-85.

[56] *Id.* at 185.

[57] *Id.* at 177-78.

[58] *Id.* at 185.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 182.

[62] *Id.*

[63] *Id.* at 181-82. In fact, Sligh and his colleagues never obtained the complainant's records until they were "required to do so" by the District Court—after Turner had appealed his conviction to the Appellate Division and after his post-conviction proceedings in trial court. *Id.* at 185.

[64] *Id.* at 181-82. The District Court did not discuss how much of this "extensive record existed before the trial—as opposed to arrests and convictions after the trial, which would not be relevant.

[65] *Id.* at 182.

outside source. Instead of trying to confirm the complainant's (false) claim about his criminal record, Sligh took the path of willful ignorance. Sligh never answered the defense's request for the complainant's criminal record. During later habeas proceedings, it was undisputed that Sligh's lack of response constituted a confirmation to the defense that Clarke had no arrest record.[66]

Based on this, the District Court held that Sligh violated Turner's due process rights—twice.[67] First, Sligh violated *Brady* when he failed to obtain and disclose the complainant's criminal record—actions that resulted in a "verdict unworthy of confidence."[68]

Second, Sligh also violated Turner's due process rights when he elicited false testimony from the complainant—testimony that Sligh "should have known was false."[69] As noted, Sligh questioned the complainant on direct-examination about his arrest and conviction record, and the complainant testified that he had neither.[70] Sligh then argued on summation that the complainant was credible because of this lack of record.[71] But Clarke had committed perjury. Had Sligh "fulfilled his *Brady* obligation, he not only would have known that [the complainant] had a record, he also would have known that [the complainant] had lied to him about his record."[72] Because Sligh failed to check the complainant's record himself, "concluding that [he] should have known of the [complainant's] perjury requires no drawing of subtle lines; it is obvious."[73]

3. The Grievance Committee Must Discipline Sligh for the Serious Professional Misconduct That Occurred Here.

As noted by one Grievance Committee, "[t]he legal profession expects all lawyers to conduct themselves in an honest and ethical manner in accordance with the Rules of Professional Conduct."[74] Professional misconduct occurs with a "violation of any of the Rules of Professional Conduct."[75] Grievance Committees are "committed to … recommending discipline for lawyers who do not meet the high ethical standards of the profession."[76]

Our laws and profession hold prosecutors to an even higher standard. Prosecutors wield immense power—the power to punish on behalf of the state. Such immense power, when left

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[66] *Id.* at 184.

[67] *Id.* at 187.

[68] *Id.* at 185.

[69] *Id.* at 187.

[70] *Id.* at 177-78.

[71] *Id.* at 185.

[72] *Id.* at 186.

[73] *Id.* at 187.

[74] *How to File a Complaint*, Attorney Grievance Committee — First Department (July 30, 2020), https://www.nycourts.gov/courts/ad1/Committees&Programs/DDC/How%20to%20File%20a%20Complaint%2007.30.2020.pdf.

[75] 22 N.Y.C.R.R. Part 1240.

[76] *How to File a Complaint*, Attorney Grievance Committee — First Department.

unchecked, can cause indelible harm. The United States Supreme Court has stated unequivocally that prosecutors "have a special duty to seek justice, not merely to convict."[77]

In handing ex-prosecutor Glenn Kurtzrock a two-year suspension for his past prosecutorial misconduct, the Appellate Division reminded us, "Prosecutors, in their role as advocates and public officers, are charged with seeing that justice is done—to act impartially, to have fair dealing with the accused, to be candid with the courts, and to safeguard the rights of all."[78]

Therefore, a prosecutor is not merely an advocate for a victim, a complainant, or society as a whole. Instead, a prosecutor is a "minister of justice," responsible to guarantee "procedural justice and that guilt is decided upon the basis of sufficient evidence."[79] Similarly, the professional guidelines promulgated by the American Bar Association make clear that a prosecutor's job goes well beyond achieving the maximum number of convictions.[80] The New York professional rules reflect this higher standard: prosecutors are the only category of attorneys with their own ethical rule.[81] Indeed, as agents of the state and ministers of justice, prosecutors play a highly public role. Failing to acknowledge their misconduct, or hold them accountable for it, tarnishes the legitimacy of the criminal system, the bar as a whole, and the rule of law itself.

A. Sligh Violated Rules of the Code of Professional Responsibility.

The standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence—not a higher standard, such as clear and convincing or beyond a reasonable doubt.[82] The Court of Appeals explained, "[T]he privilege to practice law is *not a personal or liberty interest, but 'is more nearly to be classified as a property interest, as to which the higher standard of proof has not been required.*'"[83]

Sligh made multiple violations of the Rules of the Code of Professional Responsibility.[84] Sligh withheld evidence in violation of several Rules. Rule DR 7-103(b) required a prosecutor to make "timely disclosure…of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment."[85] Two other rules, DR 7-102(a)(3) and DR 7-109(a),

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[77] *Connick v. Thompson*, 563 U.S. 51, 65-66 (2011) (quotation marks omitted).

[78] *Kurtzrock*, 192 A.D.3d 197.

[79] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b) (McKinney Commentary).

[80] 2017 ABA Functions and Duties of the Prosecutor, Standard 3-1.2 ("The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict."), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.

[81] 22 N.Y.C.R.R. Part 1200, Rule 3.8(b).

[82] See, e.g., *Matter of Capoccia*, 59 N.Y.2d 549, 453 N.E.2d 497 (1983).

[83] *Matter of Scudieri*, 174 A.D.3d 168, 173 (2019) (emphasis added, quoting *Matter of Seiffert,* 65 N.Y.2d 278, 280 [1985], quoting *Matter of Capoccia,* 59 N.Y.2d 549, 553 [1983]).

[84] The Code of Professional Responsibility predated the current Rules of Professional Conduct, and was applicable in 1988, when Sligh prosecuted Turner. The exact language of the 1988 version of the Rules could not be located. Quoted is the language from the 1989 and 1987 Rules, which is exactly the same for the applicable Rules. Therefore, there is no reason to think the 1988 Rules differed in any way in language, intention, or scope.

similarly required disclosure, and prohibited knowing concealment, of evidence.[86] A prosecutor's "deliberate pattern of avoidance, or willful blindness" to the existence of such evidence—including failure to conduct a *Brady* analysis of evidence or delegation of this duty to law enforcement—constitutes knowledge under Rule 3.8(b), the successor to Rule DR 7-103(b).[87]

Sligh violated these Rules when he failed to obtain and disclose the complainant's criminal record. The District Court specifically found that Sligh should have known about these records. Sligh should not be able to avoid accountability under these Rules because of his own failure to take an easy step and learn of the existence of the suppressed evidence. Such willful ignorance should fulfill the knowledge element of these Rules.

Sligh made a misrepresentation to the defense, and to the jury and the court. Under Rule 7-102, attorneys were not to knowingly make a false statement to the court or use evidence they knew to be false.[88] Rule DR 1-102 prohibited attorneys from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation."[89]

Sligh told the defense that the complainant had no criminal record (by not answering defense's request for the complainant's record). Sligh also elicited perjured testimony from the complainant when he should have known that it was perjured. Sligh then relied on this perjured testimony in his summation to argue that the complainant was credible. Sligh should not avoid accountability for his constitutional violation because he did not actually know that the testimony was perjured. He did not know this because of his own failure, which amounted to a constitutional violation. Therefore, the knowledge element of these Rules should be deemed fulfilled. Sligh's elicitation of perjured testimony and summation violated these Rules.

Sligh's *Brady* violation and misrepresentations prejudiced the legal process and were not befitting of a lawyer. Rule DR 1-102 prohibited attorneys from engaging in conduct that was prejudicial to the administration of justice, or engaging in any other conduct that adversely reflected on their fitness to practice law.[90] A prosecutor's violation of Rule DR 7-103(b) also

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[85] Code of Prof. Resp., DR 7-103(b) (22 N.Y.C.R.R. § 1200.34) (repealed). This rule was in effect when the discussed misconduct occurred. However, Rule 3.8(b) of the Rules of Professional Conduct replaced it in 2009.

[86] Code of Prof. Resp., DR 7-102(a)(3) (22 N.Y.C.R.R. § 1200.33**)** (repealed); Code of Prof. Resp., DR 7-109(a) (22 N.Y.C.R.R. § 1200.40) (repealed). These two rule were replaced in 2009 by 22 N.Y.C.R.R. Part 1200, Rules 3.4(a)(1), (3) (a lawyer shall not "suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce…[or] conceal or knowingly fail to disclose that which the lawyer is required by law to reveal."). *See also Rain*, 162 A.D.3d at 1460-61 (suppression of exculpatory evidence violated Rule 3.4(a)(1)).

[87] *Kurtzrock*, 192 A.D.3d 197 (deliberate pattern of avoidance or willful blindness constitutes knowledge under Rule 3.8(b), the modern equivalent of Rule DR 7-103(b)).

[88] Code of Prof. Resp., DR 7-102 (22 N.Y.C.R.R. § 1200.33) (repealed). This rule was in effect when the misconduct, as outlined above, occurred. However, Rule 3.3 of the Rules of Professional Conduct replaced it in 2009.

[89] Code of Prof. Resp., DR 1-102 (22 N.Y.C.R.R. § 1200.3) (repealed). This rule was in effect when the misconduct, as outlined above, occurred. However, Rule 8.4(c) of the Rules of Professional Conduct replaced it in 2009. *See also In re Muscatello*, 87 A.D.3d 156, 158-59 (2d Dep't 2011) (prosecutor misrepresentation of content of evidentiary document to the grand jury violated Rule 8.4(c)).

violated Rule DR 1-102.[91] Similarly, an attorney's misrepresentation during a legal proceeding prejudiced the administration of justice and reflected adversely on the lawyer's fitness, in violation of Rule DR 1-102.[92]

Sligh prejudiced the legal process, and thus the administration of justice, when he withheld documents that he was required—by constitutional, state and professional laws—to disclose.[93] He further obstructed the administration of justice when he presented perjured testimony to the jury, and relied on it in his summation. His serious misconduct is not befitting of a lawyer, a further violation of the Rules.

B. For His Misconduct, Sligh Must be Suspended.

"The purpose of a sanction in a disciplinary proceeding is not to punish but to protect the public, to deter similar conduct, and to preserve the reputation of the Bar."[94] Prosecutorial misconduct that violates the U.S. and New York constitutions has a devastating impact on due process. It is a long-standing, largely unaddressed problem in the court system that is only rarely discovered and even more rarely corrected.

In considering the appropriate measure of discipline, the Appellate Division has considered the role of prosecutor as a "substantial factor in aggravation."[95] Simply being a prosecutor supports aggravated discipline because the law tasks them "with seeing that justice is done—to act impartially, to have fair dealing with the accused, to be candid with the courts, and to safeguard the rights of all."[96] Similarly, extensive prosecutorial experience weighs towards an aggravated sanction.[97]

Though the misconduct discussed here occurred years ago, New York does not have a statute of limitation barring disciplinary action against an attorney—and rightfully so. As explained by the American Bar Association, "Statutes of limitation are wholly inappropriate in lawyer disciplinary proceedings. Conduct of a lawyer, no matter when it has occurred, is always relevant

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[90] Code of Prof. Resp., DR 1-102 (22 N.Y.C.R.R. § 1200.3) (repealed). These rules were in effect when the misconduct, as outlined above, occurred. However, Rules 8.4(d) and (h) of the Rules of Professional Conduct replaced them in 2009.

[91] *Kurtzrock*, 192 A.D.3d 197 (finding disclosure violation prejudiced the administration of justice and reflected adversely on the prosecutor in violation of Rules 8.4(d), (h), the successors to Rule DR 1-102); *Rain*, 162 A.D.3d at 1461 (same).

[92] *Muscatello*, 87 A.D.3d at 158-59 (prosecutor misrepresentation of content of evidentiary document to the grand jury violated Rules 8.4(d), (h), the modern equivalents of DR 1-102).

[93] *Rain*, 162 A.D.3d at 1460-61 (upholding disciplinary referee's finding that a prosecutor's *Brady* suppression violated Rules 8.4(d) and 8.4(h)).

[94] *Malone*, 105 A.D.2d at 460.

[95] *Kurtzrock*, 192 A.D.3d 197. *See also Rain*, 162 A.D.3d at 1462 ("[P]rosecutors carry an obligation to hold themselves to the highest standards based upon their role in our system of justice.").

[96] *Kurtzrock*, 192 A.D.3d 197.

[97] *Id. See also Rain*, 162 A.D.3d at 1461 (prosecutor's experience an aggravating factor).

to the question of fitness to practice."[98] The ABA's Model Rule 32 for Lawyer Disciplinary Enforcement makes lawyer discipline "exempt from all statutes of limitations."[99]

The Appellate Division has demonstrated that misconduct that affects the credibility of a prosecutor should not be taken lightly. It suspended a prosecutor for three years for making a "misleading" statement to a trial court, and explained that, "such [mis]conduct strikes at the heart of [the prosecutor's] credibility as a prosecutor and an officer of the court."[100] In that same case, the Appellate Division demonstrated that a prosecutor's "ample opportunity" to correct or clarify the misrepresentation—and failure to do so—counts against him in evaluating proper disciplinary measures.[101]

Sligh was not an uninformed novice but a seasoned prosecutor when he violated *Brady* and the Code of Professional Responsibility. Sligh began his career as a prosecutor in 1982,[102] and had about 6 years of prosecutorial experience when he prosecuted Turner. While he had plenty of experience to draw on, Sligh still violated a constitutional rule through his willful ignorance. This serious misconduct is not surprising; it fits seamlessly in the longer history of misconduct that has defined the QDAO through Sligh's tenure as an executive of the office.

The Grievance Committee must publicly and severely sanction Sligh for his serious misconduct. Failure to do so would be especially problematic here, since, as a former Executive of the QDAO for over two decades, Sligh served as a role model for generations of prosecutors. If the Committee fails to publicly and severely sanction Sligh for his serious misconduct, the attorneys who worked under him and looked up to him will neither avoid nor fear making similar violations. Without other mechanisms to hold prosecutors accountable, a failure to discipline a higher up such as Sligh will demonstrate to prosecutors that they are above the law; that they need not fear accountability; that they can get away with breaking the law.

Conclusion

Sligh suppressed exculpatory evidence. In doing so, he violated several Rules of the Code of Professional Responsibility. To our knowledge, Sligh remains unsanctioned publicly or privately for his serious misconduct. We call on the Grievance Committee to suspend Sligh.

As "officers of the court, all attorneys are obligated to maintain the highest ethical standards."[103] To that end, "the grievance process exists to protect the public... By bringing a complaint to a committee's attention, the public helps the legal profession achieve its goal."[104] The judicial finding identified in this grievance provides far more evidence than necessary to

[98] 2020 Model Rules for Lawyer Disciplinary Enforcement, Rule 32 and Commentary, https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_32/.

[99] *Id*.

[100] *See In re Stuart*, 22 A.D.3d 131, 133 (2d Dep't 2005).

[101] *Id.*

[102] QNS Editorial, *Executive Ada Receives Honor*, *supra*.

[103] NYSBA Committee on Professional Discipline, Guide to Attorney Discipline, available at: https://nysba.org/public-resources/guide-to-attorney-discipline/

[104] *Id.*

meet the "fair preponderance of the evidence" standard to discipline the prosecutor at issue, but we call upon the Grievance Committee to go further and investigate far beyond the court finding identified in this grievance. For the legitimacy of and public trust in the criminal system, and the bar, the investigation should be public at every stage possible.

Below are some essential aspects of such an investigation:

1. The Committee should begin by investigating the many other cases prosecuted by Sligh. As the comment to Rule 8.3 of the New York Rules of Professional Conduct reminds us, "An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover."[105] Using its power to investigate, including to issue subpoenas and interview witnesses, the Committee can and should obtain a list of all cases that this prosecutor worked on and contact the attorneys, witnesses, and accused persons (while protecting the accused's rights to privacy and counsel) in those cases. The Committee should also identify all of Sligh's other cases where the issue of misconduct was raised in the courts before trial, at trial, or on appeal, or was the subject of other ethical grievances, mentioned in the media, or identified in any other source.

2. The Committee should promptly investigate whether any supervising attorney at the Queens District Attorney's Office (QDAO) is also culpable for the ethics violation cited in this grievance under Rule 5.1(d) of the New York Rules of Professional Conduct, which provides direct culpability for supervising attorneys under various circumstances, including when a supervisor knowingly ratifies improper conduct or knows of the conduct when it could be prevented but fails to take remedial action.[106]

3. The Grievance Committee should investigate whether the Queens District Attorney's Office (QDAO) and its managing attorneys complied with its duties under Rule 5.1 of the New York Rules of Professional Conduct, requiring that law firms as a whole, and managing attorneys in particular, make efforts to ensure that all lawyers in the firm conform to the New York Rules of Professional Conduct.

4. The Committee should identify any prosecutors trained and/or supervised by Sligh and determine whether instances of prosecutorial misconduct can also be found in their work as prosecutors.

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[105] Rule 8.3, Comment [1].

[106] Rule 5.1 (d). A lawyer shall be responsible for a violation of these Rules by another lawyer if:
(1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
(2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and
(i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

We recognize that bar discipline provides a uniquely individual remedy that will not, on its own, remedy the systemic problems identified above in this letter. For this reason, we also call for the implementation of an independent public commission empowered to investigate all cases handled by this prosecutor and vacate convictions where appropriate. To be clear, we do not mean a closed-door, cloaked process at the Queens District Attorney's Office, but rather a commission that operates transparently and includes members of the public, including members of impacted communities of color, public defenders and other criminal defense attorneys, civil rights attorneys, and people who have been incarcerated and their loved ones.

Thank you for your careful consideration of this matter.

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